In the Supreme Court of the United States

OCTOBER TERM, 1953.

No. 422.

THE ROMANIAN ORTHODOX MISSIONARY EPISCOPATE OF AMERICA, THROUGH HIS GRACE BISHOP ANDREI MOLDOVAN,

Petitioner,

vs.

IOAN TRUTZA, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

OPINIONS BELOW.

The opinion of the Court of Appeals (R. 107-117) has been reported at 205 Fed. 2nd 107. The opinion, the findings of fact and conclusions of law, and the final order of the District Court (RD. 102a-105a; RP. 34a-38a; 39a-42a)[1] are not reported.

JURISDICTION.

The jurisdictional requisites are adequately set forth in the petition.

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[1] References to the proceedings in the lower court are designated as "R." References to the appendix of appellants' brief in the lower court are designated "RP"; to the appendix of appellee's brief "RD." References to the stenographic transcript of proceedings in the trial court are designated as "TR."

QUESTIONS PRESENTED.

1. Whether the Patriarch and Holy Synod of the Romanian Orthodox Church, or a Congress composed of clergymen and laymen of the American Churches, validly selects the ruling hierarch for the American Churches.

2. Whether Andrei Moldovan has power and authority to obtain possession and control of the property in question, and to exercise the privileges and prerogatives of bishop of the Episcopate by virtue of his selection and consecration as bishop of North and South America by the Supreme Church Authority of the Romanian Orthodox Church, to-wit: the Patriarch of Bucharest and the Holy Synod.

STATEMENT OF FACTS.

Respondents cannot accept the statement of the case as presented by Petitioner because a correct statement of the case materially affects the answers to the questions presented by the Petitioner. Respondents therefore submit the following statement of the case which they believe is more than adequately supported by the evidence and testimony adduced at the trial of the case in the District Court, and for purposes of convenience in this statement we shall refer to the Petitioner as the plaintiff and to the Respondents as defendants, which was their relative status in that Court.

Although the caption of the case at bar would make it seem to appear that the plaintiff in this action is the Romanian Orthodox Missionary Episcopate of America, an examination of the files reveals the following facts.

The body of the amended complaint reveals that the plaintiff is in fact one Andrei Moldovan, and his complaint is directed against the duly elected officers of the

Romanian Orthodox Missionary Episcopate of America demanding of them that they recognize the plaintiff as the duly elected Bishop of the Romanian Orthodox Missionary Episcopate of America, and turn over to the plaintiff certain assets which the defendants have in their possession, which are admitted to be the property of the Episcopate. The individual defendants, Ioan Trutza, James V. Suciu, and Viorel D. Trifa, filed their answer denying the contention of the plaintiff, interpleaded the corporate entity of the Romanian Orthodox Missionary Episcopate of America and admitted that they had no personal interest in the assets in question.

The Romanian Orthodox Missionary Episcopate of America then entered a voluntary appearance in the action and filed its answer to the amended complaint of the plaintiff Andrei Moldovan; Answer to the Counterclaim for Interpleader of the defendants, Ioan Trutza, James V. Suciu and Viorel D. Trifa, and further filed a cross-claim of its own against the plaintiff Andrei Moldovan in which it asked for certain injunctive relief against the plaintiff Andrei Moldovan.

With this explanation we shall hereafter refer to the plaintiff or the appellant as being Andrei Moldovan and our reference to the Romanian Orthodox Missionary Episcopate shall be designated as "the Episcopate."

The Romanian Orthodox Missionary Episcopate of America is a religious organization organized largely by people of Romanian heritage in the U. S. A. and Canada which has had a continual existence since approximately 1929. In 1932 it adopted its first set of official by-laws. Among other things those by-laws provided that the organization was to be autonomous in the administration of its temporal affairs, although in its spiritual affairs it would follow the teachings of the Romanian Orthodox Church

of Romania. Those by-laws further specifically provided that the Bishop of the Episcopate must be elected by the Episcopate Congress assembled in the U. S., which consisted of a body of clergy and lay delegates elected from the various parishes in the Episcopate in a democratic and representative manner. The by-laws made the election of a Bishop part of the administration of temporal affairs, but did not require that the Bishop elected be a resident of America.

In 1935, at the request of the Episcopate, the Holy Synod in Bucharest, Romania sent to America, Policarp Morusca who became the first Bishop of the Episcopate.

In 1936 Bishop Morusca appeared before the Episcopate Congress and requested that those by-laws be changed so as to provide for the election of the Bishop of the Episcopate by the Holy Synod of Romania, and he explained this request by saying that it was necessary in order for him to receive his pay from the Holy Synod in Romania which was there a State-supported institution deriving its funds from the Government. The Episcopate Congress honored the request of the Bishop and changed the by-laws accordingly. Further, at the request of the Bishop, the Congress at the same time passed a resolution to the effect that thenceforth the by-laws would not be changed except upon approval of the Holy Synod in Bucharest.

In 1939 Bishop Morusca returned to Bucharest, Romania and has never returned to the United States. From that time until the events in question in this law suit, there was no bishop of the Episcopate in the United States.

The advent of the Second World War and the fact that Romania became an enemy nation terminated any further normal intercourse between the Episcopate here in America and the Hoy Synod in Bucharest, and to this day

there has never been a treaty of peace signed between the United States and Romania.

In 1943 the Episcopate was incorporated under the laws of the State of Michigan, but continued to use and be known by other names as follows:

The Romanian Orthodox Missionary Episcopate of America,
The Romanian Orthodox Autonomous Missionary Episcopate in America,
The Romanian Orthodox Autonomous Missionary Episcopate of America,
The Romanian Orthodox Autonomous Episcopate in America,
The Romanian Orthodox Autonomous Episcopate of America,
The Romanian Orthodox Episcopate in America,
The Romanian Orthodox Episcopate of America,
Romanian Orthodox Missionary Episcopate.

Early in 1947 the Episcopate's Council received a communication from the Romanian Legation in Washington advising that the Holy Synod in Bucharest was appointing one Nica as Bishop of the Episcopate. Fearing the interference and meddling of the Communistic Romanian authorities with church affairs in the United States, the Episcopate Council unanimously decided to take emergency action and restore to the Episcopate the autonomous character of organization which had previously existed and, to do this, unanimously re-adopted the by-laws of 1932 as a temporary measure until a complete new set of by-laws could be adopted conforming in all respects to the restored autonomous character of the organization. The Secretary of the Episcopate Council at that time was the plaintiff Andrei Moldovan. This action by the Council was

by unanimous vote of the Council and accordingly, the Secretary sent a notice to all of the members of the Congress that a special Congress meeting would be convened on March 28, 1947 in Detroit, to pass upon the question of restoring complete autonomy to the Episcopate.

In response to the call sent out by the plaintiff Andrei Moldovan as Secretary of the Episcopate Council, a Church Congress did assemble in March, 1947 in Detroit, and there *unanimously* passed a resolution restoring complete administrative autonomy to the Episcopate, and declaring the right of the Congress henceforth to elect its own Bishop as originally provided in the by-laws of 1932.

In July of 1947, at its regular annual meeting, the Church Congress of the Episcopate postponed any action relative to further changes in the by-laws because the committee elected to draft the new set of by-laws had not yet completed its work. In June of 1948 the Episcopate Council caused to be published in its official newspaper, Solia, the committee's composite draft of the suggested changes to the Constitution and By-laws of the Episcopate, and at the annual meeting of the Episcopate Congress in July of 1948, these proposed changes were taken up one by one and adopted. (RD. 27a-38a.) Again by *unanimous* vote the Episcopate Congress reaffirmed the autonomous character of the Episcopate and particularly its right to nominate and elect its own bishop.

On April 30, 1947, the plaintiff, Andrei Moldovan, who was then the Secretary of the Episcopate Council, wrote a letter to the Patriarch in Bucharest, Romania, in which he said in part, "By virtue of this loyalty we have been opposed not to the Holy Synod, not to your Beatitude, neither to His Grace, Bishop Nica, of whose integrity and archpriestly worthiness we have no doubt, but against the meddling of the political power in the affairs of the church.

That is why our Church Congress, held on March 28, 1947, resolved to abrogate the statute which was imposed upon us by His Grace, the Bishop of the western unorthodox countries, Policarp, which statute had made of us a section of an episcopate created outside of the boundaries of the United States, and decided to return to the original statute which has been approved by the Holy Synod in November of 1929." (RD. 23a-25a.)

The plaintiff, Andrei Moldovan, was a delegate to, and attended, the special Church Congress held in March of 1947, and the regular Church Congress held in July 1948, at which the actions taken with respect to the by-laws of the Episcopate were by unanimous vote.

Since March of 1947 the Episcopate has continued to function and administer its affairs as an autonomous organization, and the plaintiff continued to serve as a member of the Episcopate Council and as the priest of the parish in Akron, Ohio until October 29, 1950.

In June of 1950 there was a second religious corporation organized under and by virtue of the laws of the State of Michigan bearing the name *"The Romanian Orthodox Autonomous Episcopate of North and South America,"* having as its official address, 1799 East State Fair Avenue, Detroit, Michigan. (RD. 48a-50a.) It should be noted at this time that this is a separate and distinct corporate body and is not the Romanian Orthodox Missionary Episcopate of America which is a party litigant in this case. For convenience and clarity in reference, we shall refer to this second corporation as the "New Episcopate." It is so referred to in the record of the testimony. (RD. 65a; 67a.) In order to avoid any confusion may we again remind the Court that in referring to the corporate entity which is a party to this litigation, we will use the term "Episcopate."

On October 29, 1950 the Plaintiff Andrei Moldovan advised his parishioners that he was ill and needed to go away for his health. He left the City on that day and subsequently various members of the Plaintiff's Akron parish received postcards, all written in the handwriting of the Plaintiff and postmarked at The Hot Springs National Park, Arkansas, on the 3rd day of November, 1950. (RD. 75a-79a.) Near the end of November the Plaintiff reappeared in Detroit, Michigan and announced that in fact he had been to Bucharest, Romania and there consecrated a Bishop by the Holy Synod. In December of 1950 he caused to be published a booklet purporting to tell of his activities during his sojourn in Romania, and in that booklet he is quoted as saying that he was called to Romania "to become successor to the Holy Apostles at the helm of *The Romanian Orthodox Autonomous Episcopate of North and South America,*" which the testimony reveals was the new corporate Episcopate incorporated in June 1950 and not the Respondent Episcopate. (RD. 86a-87a.)

When the Episcopate refused to recognize him as its Bishop, the Plaintiff filed his action in the District Court.

In the course of the litigation of this case in the District Court, there were two rather lengthy hearings, the first of which took place in January of 1951 at which there was a hearing on the Plaintiff's request for a preliminary injunction. At that hearing the Plaintiff, in his attempt to prove that he was the Bishop of the Episcopate and as such entitled to the possession and control of the assets of the Episcopate, introduced certain evidence, all of which indicated that if the Plaintiff was elected and consecrated a Bishop by the Holy Synod in Bucharest, Romania, which the Defendants and the Episcopate deny, then he was in fact elected the Bishop of the so-called "New Episcopate"

and not the Bishop of the Romanian Orthodox Missionary Episcopate of America.

At the final hearing of this case in the District Court, the Plaintiff completely changed his position with respect to his evidence and testimony, and after hearing all of the facts, the District Court found and so stated in its opinion that the Defendants had proven their contention that the Plaintiff was not in fact the Bishop of the Romanian Orthodox Missionary Episcopate of America, and that if the Plaintiff was a Bishop of any kind, he must of necessity be the Bishop of the New Episcopate formed in 1950. (RD. 102a; 105a.) The District Court further found that the Plaintiff had failed completely to prove his contentions.

ARGUMENT.

The importance of the disparity in the statements of the case by Petitioner and Respondents now becomes apparent. Assuming that the first Question propounded by Petitioner is meritorious in the case at bar, which Respondents deny, its answer is immaterial to the outcome of this case because Petitioner has failed to prove to the satisfaction of the District Court and to the Court of Appeals that he has been either elected, nominated, appointed or consecrated the bishop of the Respondent Episcopate by any authority whatsoever.

In Petitioner's second Question he begs the issue because the question assumes that he has been duly elected, qualified and consecrated as the bishop of the Respondent Episcopate. His only claim to the possession and control of the property of the Respondent Episcopate is by virtue of his claim that he is Respondent's bishop. Were he in fact such there would be no litigation. But not having proved his position he is without the right to exercise

the power of possession and control over the property of the Episcopate.

Petitioner assumes at all times that his nomination, election and consecration as the bishop of the Romanian Orthodox Episcopate of America is not in question and that he has proven that to be the fact, whereas exactly the contrary is true. On page seven of Petitioner's brief he says:

> "* * * a group of clergy and lay members of the Episcopate met in a conference in May, 1950 and determined that the solution to the problems of the Episcopate would be the selection of an American citizen as bishop and ruling hierarch of the Episcopate. In accordance therewith, they directed their efforts to the Supreme Church authority in Romania. Upon the recommendation of this group the Patriarch and Holy Synod in Romania selected Father Arch-Priest Andrei Moldovan, an American Citizen, as bishop and ruling hierarch of the American diocese * * *."

Now to what "diocese" was Petitioner referring? The new Episcopate, incorporated in Michigan in June 1950 (RD. 48a) has as its official name "The Romanian Orthodox Autonomous Episcopate of North and South Americas," a name never used by the Respondent Episcopate. The cablegram, which Petitioner claims was sent to him by the authorities in Romania ordering him to go to Bucharest to be ordained a bishop, was addressed to him as an Arch-Priest of The Romanian Orthodox Episcopate of North and South America. (RD. 63a; RD. 68a.)

The address to which that cablegram was sent was "1799 E. State Fair, Detroit, Michigan"—the official address of the new Episcopate as it appears in the Articles of Incorporation. (RD. 48a; 68a.)

The unauthenticated document which Petitioner calls his "Gramata" and which he produced *as his evidence of his consecration as a bishop* at the hearing that he requested for a preliminary injunction, contains the statement:

> "* * * seeing the unanimous expressed wish of the Eparchial assembly of this episcopate held or convened on May 17, 1950, in Detroit, to have as bishop the very Reverend Arch-Priest Andrei Moldovan" (RD. 79a-80a).

Petitioner testified under oath at that preliminary hearing that he had been nominated or elected on May 17, 1950 in Detroit, Michigan, as a bishop by a group of people who were associated with that new episcopate and that he had the minutes of such meeting to prove it (but not with him at that moment) and yet at the final hearing of this cause in the District Court he took an exactly contrary position. (RD. 51a-56a; 95a-97a.) His obvious reason for this change of position was the fact that the unauthenticated documents, for what they were worth, were nevertheless pointing to the conclusion that all of the dealings of the Holy Synod were with the new Episcopate or its associates and had nothing to do with the Respondent Episcopate.

The comments of the District Court upon the testimony of Petitioner are particularly pertinent in this respect. (RD. 95a-97a; 99a-101a.)

Immediately upon his announcement of his claim to the office of Bishop, Petitioner published a booklet purporting to tell of his activities in Romania. (RD. 86a.) In that booklet he says that he was called "to become a successor to the Holy Apostles at the helm of The Romanian Orthodox Autonomous Episcopate of North and South Americas." (RD. 86a.) Again Petitioner has staring him

in the face the official name of the new Episcopate and his admission that if he was made a bishop he was made bishop of that episcopate and not bishop of Respondent Episcopate.

Petitioner also had made an official seal to be affixed to his official letters and documents. That seal also bore the name of the new episcopate. (RD. 89a.) Obviously at that early date Petitioner did not foresee that Respondents would discover his fraud and deceit and that he would become caught in his own trap,

In reply to Petitioner's first, second and third assigned reasons for granting the writ may we say that in the opinion of Respondents the decisions of both the District Court and the Court of Appeals reaffirm and strengthen the fundamental concept of the separation of church and State. Those decisions reaffirm and strengthen the right of free Americans to enjoy the freedom of religious worship free from the interference of a foreign state equally as much as interference from a domestic State; free from the demands of imposters and free from the fraudulent and deceitful practices of unscrupulous clerics or demagogues who would through fraud and deceit attempt to wrongfully impose themselves upon a church organization and then claim that the constitutional guarantee of freedom of religion prevents such church organization from resorting to the orderly processes of the law to assure themselves of the very freedom which the law is obliged to protect.

The Petitioner is guilty of fallacious reasoning in assuming that the courts are helpless and cannot protect the innocent from the encroachments of the wicked upon a freedom guaranteed to the people by the Constitution of the United States of America. The absurdity of the argument is self evident and needs no further comment.

In answer to Petitioner's fourth assigned reason for granting the writ we admit the principles expressed in the *Kedroff* case and the *Watson* case to be sound and good law but we respectfully submit that they are distinguishable from the case at bar and are not applicable to the facts in this case. As was pointed out by the Court of Appeals there was no legislation involved as in the *Kedroff* case. Furthermore it is worthy of note at this point that this case is not one where the proper church procedure has admittedly been followed in either appointing, electing, nominating or consecrating the Petitioner as the bishop of the Respondent Episcopate but on the contrary one in which both the District Court and the Court of Appeals found that regardless of the questions of law involved the Petitioner has totally failed to prove his claim that he is the duly elected, qualified and consecrated bishop of the Respondent Episcopate. The District Court said, "It is the contention of the defendants that if the plaintiff, Andrei Moldovan, was, in fact, consecrated a bishop by the Holy Synod of Bucharest, Romania, he was consecrated as such bishop of a new and wholly separate episcopate." (RD. 102a.) "The contentions of the defendants, which I have recited, have been clearly established." (RD. 105a.)

The Court of Appeals said

> "The decision must in any case be affirmed upon the ground that the plaintiff Moldovan has not borne the burden of proof in showing that he has been elected or consecrated as bishop of the Episcopate." (R. 116.)

In closing may we respectfully call to this Honorable Court's attention a case which this Court recently refused to certify: *The Rosicrucian Fellowship (a corporation) et al., appellants vs. The Rosicrucian Fellowship Non-Sectarian Church (a corporation) et al., Respondents,*

United States Supreme Court Docket No. 482, October Term, 1952, 39 Cal. 2nd 121, 245 Pac. 2nd 481. That was a case wherein civil and property rights were determined and injunctive relief granted just as in the case at bar.

CONCLUSION.

In conclusion we submit that the decisions in both the District Court and the Court of Appeals were correct in all respects both as to the findings of fact and conclusions of law; that there is no conflict of decisions involved and no important question of Federal law has been raised under the facts in this case, and that therefore the petition for a writ of certiorari should be denied.

Respectfully submitted,

PERCY H. RUSSELL,

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STRANGWARD & LLOYD,

Of Counsel.